

State of Maine

MAINE SUPREME JUDICIAL COURT

Docket Nos. BAR-18-4
BAR-16-15

BOARD OF OVERSEERS OF
THE BAR,

Plaintiff,

v.

SETH T. CAREY, Esq.
of Auburn, ME
Me. Bar # 09970

Defendant

ORDER

After a three day hearing in August, the court issued a decision on September 12, 2018 finding that Attorney Seth Carey had violated the Maine Rules of Professional Conduct in three significant respects and had also violated the conditions of a November 21, 2016 order issued in a prior disciplinary proceeding, BAR-16-15.

On November 14, 2018 the court held a hearing to determine what sanctions should be imposed for the violations in question. At that time the court heard presentations and argument from Deputy Bar Counsel, from counsel for Carey, from several persons who spoke on Carey's behalf, and from Carey himself. In addition, Carey and his counsel submitted a number of letters and statements on Carey's behalf.

Guiding Principles

The purpose of bar discipline is not punishment but protection of the public, the legal profession, the courts, and the justice system as a whole from attorneys whose conduct demonstrates unfitness to practice law.

Maine Bar Rule 21(c) provides in pertinent part as follows:

In imposing a sanction after a finding of lawyer misconduct, the Single Justice . . . shall consider the following factors, as enumerated in the ABA Standards for Imposing Lawyer Sanctions:

- (1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
- (2) whether the lawyer acted intentionally, knowingly, or negligently;
- (3) the amount of the actual or potential injury caused by the lawyer's misconduct; and
- (4) the existence of any aggravating or mitigating factors.

The Supreme Judicial Court has not resolved whether the ABA Standards referred to in Rule 21(c) have been fully incorporated into the Maine Bar Rules or whether those standards are designed to provide guidance without being binding. *See Board of Overseers v. Prolman*, 2018 ME 128 ¶ 25, 193 A.3d 808. In the *Prolman* decision, three Justices opted in favor of full incorporation and three Justices concluded that full incorporation would be unnecessarily cumbersome. The remaining Justice has separately expressed the view that the latter approach is more appropriate. *See Board of Overseers v. White*, BAR-18-03 (order filed October 3, 2018) (Alexander, J.).¹

¹ All of the citations to ABA Standards in this order are to subsections within III(C) of the ABA Standards for Imposing Lawyer Sanctions originally approved in February 1986 and amended in February 1992 .

For purposes of this case, the court will consider each of the factors set forth in Maine Bar Rule 21(c) and the accompanying ABA Standards. The court has not found any directly comparable cases but will also generally consider the range of disciplinary sanctions that have been imposed by the Supreme Judicial Court in other cases. Consideration of sanctions imposed in other cases is not expressly listed in the ABA Standards or in Rule 21(c), but the Supreme Judicial Court has stated that bar discipline should be consistently imposed to the extent possible. *Board of Overseers v. Rodway*, 470 A.2d 790, 791 (Me. 1984). In applying the ABA Standards, courts in other jurisdictions have also looked to the sanctions imposed in prior cases. See, e.g., cases collected in the ABA's Annotated Standards for Imposing Lawyer Sanctions (2015) at 130-31, 245-46, 308-09.

Assessing the Individual Violations

The duties violated by Carey were duties owed to the public and to the legal system.² In each case the court needs to consider the nature and severity of the violations and whether the violations were intentional, knowing, or negligent.

1. The court found that Carey violated Rule of Professional Conduct 8.4(b) by engaging in unwanted physical advances that rose to the level of criminal conduct in the form of unlawful sexual touching and assault. September 12, 2018 order ¶¶ 11-12 and 19-23. These were violations of his duties to the public. See ABA Standard 5.1. In particular, groping a female tenant on one

² It can be argued that in each case Carey also violated his duty to the legal profession because it is the duty of lawyers to uphold the law, to abide by court orders, and to avoid any interference with the administration of justice. However, the ABA Standards limit duties owed to the legal profession to those arising from bar rules applicable to lawyer advertising, client solicitation, unreasonable fees, unauthorized practice, and the like. See ABA Standard 7.0.

occasion and pulling her head against his crotch on another occasion reflected adversely on Carey's trustworthiness and fitness as a lawyer. Those actions were performed intentionally.³

Considered in light of the factors in ABA Standard 5.1, the above conduct, while serious, does not fall in the most serious range. The conduct in question did not involve dishonesty or fraud. It did not arise in the course of a lawyer-client relationship. The court does not minimize the severity of Carey's sexual harassment of a woman who was staying in his Rumford property because she was homeless, had been living in her car, and had fled an abusive relationship. Nevertheless – in contrast to the *Prolman* case – the woman in question was able to rebuff all of Carey's unwanted advances, she was not highly vulnerable to sexual exploitation, and there is no evidence that she suffered psychological injury as a result of Carey's conduct.

Under ABA Standard 5.12, the presumptive sanction for the conduct outlined in paragraphs 11-12 of the September 12, 2018 order would be a suspension.

2. Carey's failures to comply with the interim suspension order, set forth in paragraphs 26-38 of the September 12, 2018 order, were violations of his duties to the legal system. See ABA Standard 6.2; M. R. Prof. Conduct 3.4(c). Maine Bar Rule 21(a)(2) also expressly provides that willful violations of valid court orders shall be a ground for discipline.

In two respects – the violations set forth in paragraphs 26 and 34 – Carey's actions can be attributed to negligence. His other violations were intentional.

The most problematic of these violations involved the continuation of Carey's campaign for District Attorney after his interim suspension. On one hand, his continued campaign can be

³ Courts in other jurisdictions have consistently ruled that bar discipline for criminal conduct does not depend on whether the lawyer has been convicted and does not require the criminal standard of proof. See cases collected in the ABA's Annotated Standards for Imposing Lawyer Sanctions (2015) at 220-21, 224-25.

explained as founded on a hope that he would be reinstated in time to take office. However, and particularly after the court's September 12 order, the continuation of his campaign can also be characterized as a serious misrepresentation to the voters of Androscoggin, Franklin, and Oxford counties as to Carey's potential ability to practice law and serve as District Attorney if elected.

Individually, none of Carey's remaining violations of the interim suspension order was particularly serious. Many were rejected by judges who were aware of the interim suspension. However, taken together, Carey's actions constitute a pattern of violations and corner-cutting – such as by purporting to act as a paralegal in one case and by adding himself as a party on a notice of appeal in another case – that demonstrate intentional disobedience of the court's order.

Among the factors set forth in ABA Standard 6.2 is whether the lawyer's actions were taken for his own benefit. With one exception, Carey's actions were not taken for his own benefit but were in furtherance of continued representation of his clients. The exception was his campaign for District Attorney, which was indisputably for Carey's own benefit.

While none of Carey's violations of the interim suspension order ultimately caused much actual interference with legal proceedings, both M. Bar R. 21(c)(3) and the relevant ABA Standards call for sanctions where a lawyer's misconduct would potentially interfere with legal proceedings even if no actual interference occurred. Because Carey's actions were intentional, the presumptive sanction under ABA Standard 6.22 would be a suspension. Given the potentially serious interference to the legal system caused by his campaign for District Attorney, an argument can also be made that the presumptive sanction would be disbarment under ABA Standard 6.21.

3. Carey's attempt to tamper with a witness, as set forth in paragraphs 39-46 of the September 12, 2018 order, is the most serious of the multiple acts of misconduct at issue in this

proceeding. His actions constituted both a violation of his duty to the public and a violation of his duty to the legal system. See ABA Standards 5.11(a) (serious criminal conduct which includes intentional interference with the administration of justice) and 6.31(a) (intentional tampering with a witness causing potentially significant interference with the outcome of the legal proceeding). As noted in paragraph 45 of the September 12, 2018 order, Carey's actions would constitute criminal offenses under three subsections of 17-A M.R.S. §§ 454(1).⁴ All are felonies. Those actions violated Rules 8.4(b) and 8.4(d) of the Maine Rules of Professional Conduct. They also violated Rules 3.4(b) and 3.4(f). The actions in question were intentional, and they caused potentially significant interference with the outcome of this proceeding.

Counsel for Carey points out in mitigation that Carey did not communicate with the witness directly but through her counsel. Non-disclosure agreements negotiated between counsel are legal and have been employed to settle claims of sexual harassment – although that practice has recently been subject to considerable criticism. In this case, however, Carey's actions were not designed to settle a claim by the victim but were designed to have her disavow to the Board of Bar Overseers her prior sworn testimony at the PFA hearing and to have her file a motion in this proceeding to dismiss the disciplinary charges. Under Carey's proposal, his arrangement with the victim and the pecuniary benefit to be provided was not to be disclosed to this court.

Offering a pecuniary benefit to induce a witness to recant her testimony and to withhold evidence is a direct attempt to undermine the integrity of the legal process. The presumptive sanction under ABA Standards 5.11(a) and 6.32(a) is disbarment.

⁴ Although the tampering was not successful, section 454(1)(A) includes attempts to induce a witness to inform falsely and withhold testimony. In addition, section 454(1)(B) applies to the offer of a pecuniary benefit to withhold testimony – whether or not the offer is accepted.

Violation of the November 21, 2016 Order

Carey's major violations of the prior suspension order consisted of the criminal conduct – both the unwanted physical advances and the witness tampering – that has been discussed above. As previously noted, that conduct was intentional. Carey's remaining violation of the prior suspension order (his failure to consult a psychiatrist and comply with any recommendations with respect to ADHD medication) was intentional but not serious. While Carey exhibits some features of ADHD in the form of distraction and lack of attention to detail, his primary problems do not stem from distraction and lack of attention to detail. There is no reason to conclude that ADHD medication would have made any difference in the behavior that led to the violations found in the September 12 order.

Prior Disciplinary Offenses

Under the ABA Standards a lawyer's prior disciplinary history can be considered under both Standard 8.0 and as an aggravating factor under Standard 9.22(a). ABA Standard 8.0 appears to be primarily addressed to misconduct that is the same or similar to prior misconduct. Although Carey's prior disciplinary sanctions are similar in some respects to each other, they were not imposed for the same or similar offenses as the current violations found in the September 12, 2018 order. Accordingly, Carey's prior disciplinary record will be considered as an aggravating factor under Standard 9.22(a).

Carey has received disciplinary sanctions on three prior occasions based on findings that he had violated the Bar Rules or the Rules of Professional Conduct:

1. On February 9, 2009 (BAR-08-04) Carey received a suspension of six months and one day based on the following findings:

- that Carey had on two occasions violated former Bar Rule 3.6(f) – now M.R. Prof. Conduct 4.2(a) – by communicating with opposing parties behind the back of their lawyers. In one of these instances, although Carey contended that certain documents had been presented to opposing counsel prior to their submission to the opposing counsel’s client, the single justice found that the evidence “resoundingly suggests” the contrary. In the other instance, the single justice found that Carey had spoken to a represented party on substantive issues outside the presence of the party’s lawyer and that Carey’s explanation was not plausible. See February 9, 2009 order in BAR-08-04 at 2-3, 5-6.

- that in contravention of former Bar Rule 3.6(d), Carey had also facilitated conduct by his client that was in violation of a court order. See February 9, 2009 order in BAR-08-04 at 6;

- that Carey had falsely stated he had not had any contact with law enforcement in violation of former Bar Rule 3.7(b) – now M. Rule Prof. Conduct 3.3(a)(1). See February 9, 2009 order in BAR-08-04 at 6-7; and

- that, as reported by two different judges, Carey had demonstrated a lack of competence in violation of M. Bar R. 3.6(a)(1) and (2) – now M. Rule Prof. Conduct 1.1 – during the trial of a family matter, the trial of a motor vehicle offense, and a bail argument. See February 9, 2009 order in BAR-08-04 at 7.

2. On October 7, 2009 (BAR-08-10) Carey received a thirty day suspension – concurrent with the suspension imposed in BAR-08-04 – for conduct unworthy of an attorney in violation of former Rule 3.1(a). That violation was based on an incident where a female acquaintance reported an evening when Carey had become very angry and aggressive, had struck her German Shephard puppy, had refused her request that he leave her residence that night, and had again initially refused to leave the residence the following morning. While he denied certain of the allegations, Carey agreed that some of his actions could have caused the acquaintance to become upset and distraught and that his conduct was unworthy of an attorney in violation of former Rule 3.1(a). See October 7, 2009 order in BAR-08-10 at 3.

3. In docket no. BAR-16-15 a negotiated order was entered imposing on Carey a two-year suspension effective November 21, 2016 – a suspension that was itself suspended for two years. By this time former Maine Bar Rule 3 had been replaced by the Maine Rules of Professional Conduct (effective August 1, 2009). The two year suspension was based on the following:

- that based on the testimony of four jurists, Carey had failed to demonstrate core competence on a number of occasions. See November 21, 2016 order in BAR-16-15 at 2-3. Based on that testimony the court found that Carey had committed violations of M. Rule Prof. Conduct 1.1 (incompetence), 1.3 (lack of reasonable diligence), 3.3(a)(3) (offering false evidence), 3.3(b) (failure to disclose false evidence to a court), and 8.4(d) (conduct prejudicial to the administration of justice). *Id.* at 3.

- that in violation of Rules 1.1 and 1.3, Carey had also demonstrated a lack of competence and diligence in a workers compensation matter by failing to provide certain medical reports as required by a Hearing Officer's procedural order. See November 21, 2016 order in BAR-16-15 at 3-6; and

- that Carey had made improper expenditures from his IOLTA account, which the single justice found at a minimum constituted a further violation of Rule 1.1 (competence). See November 21, 2016 order in BAR-16-15 at 7-8.

The November 21, 2016 order – consented to by Carey – was the culmination of proceedings in which a Grievance Commission Panel had originally issued a reprimand with multiple conditions and probation that included a two-year restriction prohibiting Carey from engaging in any sort of trial practice. The November 21, 2016 order recited that while Carey contended that the jurists' accounts were inaccurate and that they had colluded in a conspiracy against him, he agreed that their testimony constituted sufficient evidence for the court to find that he had demonstrated a lack of core competence. November 21, 2016 order at 2-3.

Carey was admitted to the Maine Bar in 1996, and it is disturbing that after he had been practicing for almost ten years, four jurists felt strongly enough about his lack of core competence to have initiated or supported the bar complaint that resulted in the November 21, 2016 order.

Additional Aggravating Factors

In addition to his prior disciplinary record, there are three other aggravating factors:

The first is that multiple violations have been found in this case. See ABA Standard 9.22(d).

Second, Carey has engaged in what the court concludes constitutes a pattern of misconduct in addition to the violations specifically charged. See ABA Standard 9.22(c). This includes what the court has found to be intemperate, vituperative and inappropriate filings in this case and the filing of a baseless lawsuit against jurists, witnesses, and other participants in the proceeding in BAR-16-15 that led to the November 21, 2016 order – an order to which Carey had agreed. See September 12, 2018 order ¶ 59; *Carey v. Board of Overseers*, 2018 ME 119. The latter lawsuit made no sense other than as an angry, vindictive gesture on Carey's part.

The latter suit is also part and parcel of Carey's history of refusing to acknowledge the wrongful nature of his conduct, which is itself an aggravating factor under ABA Standard 9.22(g). Both in BAR-08-04 and in BAR-16-15 Carey was extremely combative, casting aspersions against opposing counsel and arguing among other things that judges were conspiring against him. See, e.g., February 12, 2009 order in BAR-08-04 at 5 (characterizing Carey's testimony as "evasive, combative, and accusatory"); *id.* at 7 (recounting intemperate statements in furtherance of Carey's apparent belief that Bar Counsel was engaged in unethical conduct and that a judge was colluding with counsel against him); November 21, 2016 order at 2 (referring to alleged judicial conspiracy).

In this case the same angry refusal to accept responsibility was present up to the August hearing when Carey – although reiterating his denial that he had made unwanted physical advances – acknowledged that he needed help for a personality disorder which had resulted in numerous instances in which he had exercised bad judgment. This acknowledgment is a mitigating factor to be weighed below.

Mitigating Factors

Only one of the mitigating factors set forth in the ABA Standards is present in this case – personal or emotional problems. ABA Standard 9.32(c).⁵ Specifically, as set forth in Dr. Nadir Behrem’s June 25, 2017 report (Board Ex. 27) and in Dr. Behrem’s testimony on August 16, 2018, Carey has a personality disorder marked by a tendency toward grandiosity, suspiciousness bordering at times on paranoia, belief that persons who oppose or criticize him are engaged in a vendetta or conspiracy against him, argumentativeness, holding grudges, difficulty in expressing anger in a socially acceptable manner, and a tendency to blame others for any setbacks.⁶

At the three-day hearing in August and at the sanctions hearing on November 14, Carey did not dispute Dr. Behrem’s diagnosis. Moreover, all the evidence before the court supports the conclusion that Dr. Behrem’s diagnosis hit the nail on the head.

As the court has previously noted, Carey’s personality disorder partially explains but does not excuse his misconduct. Although Carey’s personality disorder has contributed to many of Carey’s violations, the public and the legal system are entitled to protection from the misbehavior of a lawyer whether or not that misbehavior is the product of a personality disorder in whole or in part.

For this reason, Carey’s personality disorder would not necessarily be a mitigating factor except that, for the first time as far as the court is aware, Carey conceded during the August hearing

⁵ The mitigating factor for mental disability, ABA Standard 9.32(g), does not apply because even if Carey’s personality disorder were found to qualify as a mental disability, Standard 9.32(g) requires a “meaningful and sustained period of rehabilitation” that would make recurrence of misconduct unlikely. There has not been a meaningful and sustained period of rehabilitation in this case.

⁶ Dr. Behrem’s 2017 report concluded that Carey meets the diagnostic criteria for “personality disorder not otherwise specified.” See Board of Bar Overseers Ex. 27 at 15.

that he has a mental health problem. He acknowledged that his personality disorder has contributed to bar violations and other bad decisions on his part and that he needs help to overcome it.

Carey's acceptance that he has a problem and his willingness to address the problem was reiterated at the sanctions hearing. This is a mitigating factor because until now, as noted above, Carey's response to proceedings initiated by the Board of Overseers and to the resulting disciplinary sanctions has been marked by resentment, denial, and – at most – minimal and grudging compliance.

Another mitigating factor, although not listed in the ABA Standards, is that the court was presented with character references from several persons who spoke on Carey's behalf, from additional persons who submitted emails, and from portions of affidavits that were read into the record. The individuals in question attended school with him or know him from civic activities in Rumford or from singing in the church choir. The court also received statements from four persons who themselves had been clients of Carey and provided praise for the legal assistance he had provided to them. The evidence before the court demonstrates that Carey believes, as one witness stated, in "standing up for the little guy." He cares very much about his clients and represents them passionately, sometimes to a fault.

Weighing Aggravating and Mitigating Factors

Ultimately, although Carey's acknowledgment that he has a problem and his willingness to address the problem is certainly significant, the court finds that the aggravating factors – in particular, the multiple instances of misconduct and Carey's prior disciplinary history – outweigh the mitigating factors in this case.

Sanction

The Board of Overseers is seeking disbarment, which is the sanction that would be called for under the ABA Standards. As noted above, Carey's attempt to tamper with a key witness was very serious misconduct calling for a presumptive sanction of disbarment. He has also been found to have engaged in two other violations that call for presumptive sanctions of suspension and he has a significant prior disciplinary history. Under the circumstances, the Board's proposed sanction of disbarment is entirely reasonable.

Carey and his counsel seek a seven or eight month "time served" suspension to be followed by an additional suspended suspension with additional conditions – primarily that he make diligent efforts to address his psychological issues and that he subject himself to a considerably more strenuous monitoring and mentoring program under the auspices of Attorneys Howaniec and Hornblower.⁷

In support of that request Carey and his counsel argued that all of the violations now before the court followed from a failure to tape a Clemson basketball game on March 23, 2018 and if that had not happened, Carey would not be before the court. The problem with this argument is two-fold. First, Carey's unwanted physical advances might not have come to the attention of the Board of Overseers in the absence of Carey's response to the Clemson basketball game, but that does not excuse the conduct in question.

Second, Carey bears full responsibility for his conduct after this proceeding was initiated. Even if he believed the initiation of this proceeding was unjust, that does not excuse his actions in

⁷ During the monitoring period resulting from the November 21, 2016 order, Carey had a respectful relationship with the attorneys who monitored him and he listened to what they had to say but did not follow their advice.

derogation of the interim suspension order and cannot possibly excuse his attempt to tamper with a witness. It is the latter conduct above all that demonstrates his current unfitness to practice law.

As counsel for the Board of Overseers pointed out at the sanctions hearing, a conditional suspension allowing Carey to continue practicing subject to conditions has already been tried and was unsuccessful. Carey was already under a two year suspended suspension when he committed the violations found in the September 12 order.

The evidence in this case and Carey's history of prior violations demonstrate that, at least until he can demonstrate that he has successfully addressed his personality disorder and fully understands and will comply with his ethical obligations, Carey should not be permitted to engage in the practice of law.

There is no guarantee that even if Carey makes diligent efforts to address his personality disorder, he will be successful in doing so. The recommended treatment for a personality disorder is individual or group psychotherapy, but personality is ingrained and even if Carey undergoes a lengthy course of psychotherapy, he will not necessarily have overcome his propensity to engage in behavior that negatively affects his ability to practice law. For instance, if he retains the belief that judicial proceedings are unfair because judicial officers and opposing litigants are engaged in conspiracies against him, this could be seen as justifying rule-breaking on his part.

For all the reasons stated above, disbarment would be appropriate in this case. Moreover, if there were any additional bar violations beyond those found in the September 12, 2018 order or if there were to be any future bar violations, the court would be strongly inclined to conclude that disbarment is required.

However, the court will impose a three year suspension, effective as of the date of this order, for two reasons. First, although the court has not found any bar discipline cases that are

directly comparable, the range of disciplinary sanctions that have been imposed by the Supreme Judicial Court in past cases suggests that the sanction of disbarment is reserved for exceptionally egregious cases. Second, Carey has for the first time acknowledged that he has a problem and should be given an opportunity to address it.

The length of the suspension follows from the seriousness of the violations, the multiple violations, the prior disciplinary sanctions, and the amount of time that will be necessary for Carey to address and overcome his personality disorder if he is able to do so. The three-year suspension imposed shall be concurrent with the imposition of the two year suspension previously set forth in the November 21, 2016 order in BAR-16-15.

During his suspension Carey shall comply with the following conditions:

1. He shall obtain and diligently follow all appropriate treatment recommended for the personality disorder diagnosed by Dr. Behrem, including but not limited to individual or group psychotherapy.
2. He shall authorize the release of his treatment records, including all counselling records, to Bar Counsel who may, if appropriate, submit any pertinent records to the court under seal.
3. He shall not practice law.
4. If he chooses to work in any occupation associated with the practice of law, such as in a paralegal position,
 - (a) he shall have no direct contact with any opposing party or any potentially opposing party or with counsel representing an opposing party or a potentially opposing party in litigation or potential litigation;
 - (b) he shall not work as a paralegal for his father;⁸

⁸ His father is winding down his practice, and because of the parental relationship, his father necessarily has a conflict in monitoring his son's conduct. See, e.g., September 12, 2018 order ¶¶ 29-32.

(c) he shall not work as a paralegal for any attorney with whom he has a social relationship except with the approval of Bar Counsel; and

(d) any attorney or firm for which he works as a paralegal shall be advised of Carey's disciplinary history and this suspension order, shall agree to monitor Carey's compliance with this order, and shall report to Bar Counsel any violations of this order and any other conduct that would raise any question as to Carey's fitness to practice law;

5. He shall not violate any of the provisions of the Maine Rules of Professional Conduct or of this order.

6. He shall not engage in any criminal or unlawful conduct.

7. To address issues with distraction and lack of attention to detail, he shall consult a licensed psychiatrist and comply with any recommended medications.

8. He shall comply with the registration and CLE requirements as set forth in M. Bar R. 29(e)(7) and (8).

9. He shall report to Bar Counsel any matters (including the court and docket number) in which he is the subject of any civil protection orders, any criminal complaints or criminal charges, or any civil cases in which he is named as a defendant.

10. He shall report to Bar Counsel any civil proceedings (including court and docket number) which he initiates, either represented by counsel or representing himself.

Any petition for reinstatement shall be based on a showing that Carey has not only sought appropriate treatment for his personality disorder but has also been successful in treating that disorder. Any petition for reinstatement shall also be based on a showing that he has met the other requirements for reinstatement including (1) that he recognizes the wrongfulness and seriousness of the misconduct resulting in his suspension and (2) that he has the requisite honesty and integrity to practice law. See M. Bar R. 29(e)(4) and (6). Given that prior discipline was imposed based on

lack of core competence as recently as two years ago, the issue of competence should also be addressed on any petition for reinstatement.

Finally, at the time of any petition for reinstatement, consideration shall be given to whether, if Carey is readmitted, he shall be required as a condition of readmission to be monitored for an initial period by another lawyer or lawyers. If so, given the prior history of Carey generally disregarding the advice of the attorneys monitoring him, consideration should also be given to whether some more strenuous monitoring mechanism should be provided.

Other Issues


The court has considered the issue of whether Carey should be assessed the costs of the proceeding pursuant to M. Bar R. 22, but the court finds that he does not have the necessary funds and that any money that he does have should be devoted to obtaining the psychological treatment ordered above.

At the sanctions hearing the Board also asked for an order that he not commence any lawsuit against witnesses, bar counsel, or others involved in disciplinary proceedings against him. Although Carey retains his right of access to the courts and has the right to represent himself, his prior lawsuits against nearly everyone involved in BAR-16-15 and against both the complainant in RUMDC-PA-2018-20 and the Pine Tree lawyer who represented that complainant constitute a sufficient pattern of vexatious litigation so that, in the context of this disciplinary proceeding, relief is justified as part of this suspension order.

Therefore, during the period of his suspension, Carey shall submit any proposed complaint that he wishes to file on his own behalf to the court in which the action has been or will be filed

before effecting service of the complaint. That court shall screen the complaint to determine that it is not frivolous or vexatious before allowing Carey to proceed with service.

Dated: December 20, 2018



Thomas D. Warren
Justice, Superior Court

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